



PERSPECTIVES ON DIVERSITY

FOSTERING COMMUNICATION ON EQUAL EMPLOYMENT WITHIN SAN FRANCISCO CITY DEPARTMENTSBRARY

PREMIER ISSUE!

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In future issues, **PERSPECTIVES ON DIVERSITY** will cover other important topics such as confidentiality, investigation of employment discrimination complaints, workforce diversity, women in non-traditional jobs, pregnancy, affirmative action planning, targeted recruitment, etc.

This newsletter is the joint effort of the affirmative action staffs of various departments. Currently, the members of the Newsletter

Committee are: Gloria Louie (DSS), Frank Mah (CCSF), Anne Okahara (CSC), John Paez (PUC), Richard Turner (DPH), and Dorothy Yee (CSC). Comments, inquiries and suggestions are welcomed and should be addressed to **PERSPECTIVES ON DIVERSITY**, c/o CSC EEO Unit, 151 City Hall, SF 94102.

Please feel free to make copies of this newsletter for others in your department. At this time, printing and distribution is limited due to resource considerations.



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MINORITY?

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In one case, the Commission determined that one of the captains had falsified his self-identification by claiming to be Hispanic when his family birth records show lineage from Italy. In the other cases, the Commission agreed to accept the claims of captains whose grandparents were born in Spain.

The one clear conclusion is that the issue of ethnic identifications is not at all clear. Research by Civil Service staff revealed that different federal agencies have different definitions as to who is a minority. Even within the City and County of San Francisco, there are different minority

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Evelyn Hogan-Jackson

NEW AFFIRMATIVE ACTION COORDINATOR

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PREMIER ISSUE!

Welcome to the premier issue of **PERSPECTIVES ON DIVERSITY**, a newsletter covering affirmative action, equal employment opportunity, and other issues of interest and importance for departments of the City and County of San Francisco.

In this premier issue is an article on recent court and legislative actions affecting affirmative action, a report on the reasonable accommodations workshop, a big welcome to the new Affirmative Action Coordinator, information on preventing sexual harassment in the workplace, ethnicity issues in

the Fire Department, and some data on our City and County workforce.

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WHO'S MINORITY?

In the past few weeks, the San Francisco Fire Department has received a lot of attention on the ethnic identifications of its firefighters and officers.

Charges have been made that firefighters are changing their ethnic identifications from White to one of the minority groups in order to take advantage of hiring and promotional benefits spelled out in the consent decree. The decree, which was signed in 1988, seeks to increase minority and female representation in the Fire Department.

The Civil Service Commission conducted hearings to review challenges made by a fire captain that three of his colleagues are not Hispanic. All four had recently participated in the civil service examination for battalion chief. The challenger charged that his col-

leagues were of European backgrounds, were light-skinned, did not live the Hispanic lifestyle, did not speak Spanish, and one of them lived in Hillsborough.

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SEXUAL HARASSMENT OVERVIEW

by John Paez

Prohibition of and Protection Against Sexual Harassment

Sexual harassment is a form of unlawful sex discrimination. Federal, State of California and Civil Service Rules prohibit sexual harassment in the workplace. A victim of sexual harassment is entitled to seek appropriate remedies by filing a complaint with any of the above listed agencies and in certain City and County of San Francisco Departments which have an internal discrimination complaint process.

General Types of Sexual Harassment

- *Quid Pro Quo Harassment* means "something for something" or "this for that." Quid Pro Quo harassment involves sexual advances and unwelcome requests for sexual favors which are either implicitly or explicitly made a factor in employment decisions. Perpetrators in this type of sexual harassment are those persons in a position of power to make or influence departmental personnel decisions.

- *The Hostile Work Environment* is the most common type of sexual harassment. This type of sexual harassment interferes with the work performance and creates an intimidating work environment for the victims of this type of sexual harassment. Perpetrators of creating the hostile work environment can be almost anyone: a manager, supervisor, co-worker, vendor, consultant, etc.

Specific Kinds of Sexual Harassment
There are five kinds of sexual harassment. They are as follows:

- Verbal harassment includes

sexual derogatory comments, statements or slurs

- Physical harassment includes assault, impeding or blocking movement

- Visual harassment includes sexually derogatory posters, letters, graffiti, cartoons and drawings

- Request for sexual favors or unwanted sexual advances (Quid Pro Quo)

- Hazing, actions of initiation which are sexually designed and motivated

Liabilities and Effects of Unlawful Sexual Harassment

A victim of sexual harassment is entitled to an appropriate "make whole" remedy where harassment is deemed to have occurred. Remedies can include cease and desist orders to persons perpetrating the harassment, or stern discipline up to and including termination. Remedy can also include monetary considerations if a victim can demonstrate an economic loss. In a civil action brought forward by a victim of sexual harassment, individuals who participated in sexual harassment may be financially liable for their acts.

Recommendations For Preventing Sexual Harassment

There are measures that can be taken by any City and County Department which will assist in minimizing/preventing costly sexual harassment complaints. The following recommendations are offered.

- If your department has a policy concerning the prohibition of sexual harassment, or has

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UPDATES:

Three major civil rights issues were decided this past year which have impact on the City and County of San Francisco.

AMERICANS WITH DISABILITIES ACT SIGNED
The ADA, signed by President Bush on July 26, 1990, prohibits discrimination against qualified persons with disabilities and requires employers to make reasonable accommodations. The ADA also provides disabled persons with remedies in the event that the ADA is violated. EEOC will be issuing guidelines in the near future.

1990 CIVIL RIGHTS ACT VETOED
In another move, President Bush survived an attempt by Congress to override his veto of a bill, the 1990 Civil Rights Act. He rationalized that if the Act passed, it would compel employers "to adopt quotas in order to avoid liability." Supporters of the bill have reintroduced a similar measure.

U.S. SUPREME COURT REFUSES APPEAL BY FIREFIGHTERS
The U.S. Supreme Court refused to hear an appeal by San Francisco's white firefighters. By refusing to hear the case, the Court reinforced its prerogative to allow court approved goals as an appropriate form of remedy to correct egregious acts of discrimination. The white firefighters union was offered to co-sign the consent decree but refused. Their refusal forfeited the court to decide that they forfeited any right to the appeal process.

MINORITY

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groups identified by the Civil Service Commission, Human Rights Commission, and School District. The Civil Service Commission reports to the U.S. Equal Employment Opportunity Commission (EEOC), and therefore, applies the EEOC definitions.

However, the EEOC states that "the concept of race does not denote clearcut scientific definitions of anthropological origins... an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging".

Currently, these standards apply:

1. Individuals self-identify as to ethnicity;
2. A person may challenge another individual's self-identification, but must provide evidence that the self-i.d. is incorrect;
3. An individual who requests a change in ethnic identification must provide substantial documentation that the change is justified.

Some individuals have suggested that ethnic panels be created to review ethnic claims of firefighters. Another suggestion was made to require that anyone receiving a benefit from the consent decree due to race or ethnicity must verify the ethnicity claim. Still another idea is to post a listing of all fire department personnel with ethnic identifications and allow a limited time for chal-

WORKSHOP GIVEN ON REASONABLE ACCOMMODATION

On December 7, 1990, the Civil Service Commission's EEO Unit sponsored a panel presentation on the issue of reasonable accommodation. About 100 City departmental personnel and affirmative action staff members attended. The panelists were: Anne Steiner, Disability Access Coordinator for the City of Berkeley; Jo Anne Frankfurt, Employment Law Center; and Paul Imperiale, Mayor Agnos' Disability Coordinator.

Anne Steiner defined reasonable accommodation as "modifications to a worksite, job, or manner in which a job is done which enables a disabled person to perform that job safely and effectively." Steiner then made the following points.

- As an employer, the City is required by law to provide reasonable accommodation for the known physical or mental limitations of an otherwise qualified employee or applicant.
- To determine a reasonable accommodation, focus on 1) the essential functions of the job, 2) the physical or mental limitation of the

disabled employee, and 3) how to change the "means" of job performance to achieve success.

• A reasonable accommodation must be specific to a physical or mental limitation (e.g. a stamina limitation) and not to a specific disability (e.g. post polio syndrome). Functional limitations can differ among individuals with the same disability.

• Since the purpose of providing a reasonable accommodation is to increase the effectiveness or safety of the individual's job performance, an accommodation that does neither need not be provided.

• The disabled employee is often the best resource in determining a reasonable accommodation. Most people with disabilities have been living cost-effectively and successfully with their disabilities for years.

Attorney Jo Anne Frankfurt reviewed laws applicable to the City which mandate reasonable accommodation for qualified individuals with disabilities: the Rehabilitation Act of 1973, sections 503 and 504; the Americans with Disabilities Act (ADA) of 1990 (takes effect in 1992);

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lenges to be made. Some community advocates contend that these controversies can undermine the positive developments in affirmative action in the Fire Department by creating greater divisiveness among its workforce. Others feel that the Commission is opening the door to a "witch hunt" mentality.

These issues are not new to the

City and County of San Francisco. The San Francisco Police Department also had to address these problems when it entered into a consent decree in 1978. Things have quieted down there as the department has accepted affirmative action as sound management practice. Discussion on the Fire Department is expected to continue before the Civil Service Commission.

City & County of San Francisco WORKFORCE CHANGES

	<u>1980</u>		<u>1990</u>	
White	13,319	(52.4%)	12,868	(42.3%)
Black	5943	(23.4%)	5998	(19.7%)
Hispanic	1703	(6.4%)	3216	(10.6%)
Asian	2634	(10.4%)	4747	(15.6%)
Filipino	1720	(6.8%)	3474	(11.4%)
Amer.Ind.	79	(0.3%)	119	(0.4%)
Male	16,512	(65.0%)	17,763	(58.4%)
Female	8886	(34.6%)	12,659	(41.6%)
Total	25,398		30,422	

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adopted the City's policy, ensure that the policy is disseminated to all managers and supervisors and posted in all conspicuous areas.

- Take measures in departmental meetings to discuss the policy and ensure that supervisors read and understand all elements of the policy including their responsibilities. In meetings, establish your commitment concerning the prohibition of sexual harassment and reiterate your commitment as may be necessary.

- If your department has an internal EEO Unit, seek assistance in clarifying any aspect of the policy which is not understood. If your

department does not have an EEO Unit, contact the EEO Unit of the Civil Service Commission for assistance.

- Since sexual harassment can include allegations involving co-workers, line employees should know their responsibility in maintaining the hostile-free work environment. Ideally, line staff should receive a copy of the policy.

- Many City departments have an internal process whereby victims of sexual harassment may seek redress. If your department does not have a procedure in place, contact the EEO Unit of Civil

Service to assist you in developing one. Once a complaint is filed outside of your department, you lose any control to resolve the problem at your level.

- Advise all employees of your internal process and encourage them to use it as a first step. Keep in mind, however, that an employee is not required to use an internal process.

- If your department does not practice it, consider adopting an open door policy specifically for matters involving alleged sexual harassment.

- Ensure that reports of sexual harassment are immediately reviewed by you or responsible agents of your department. If you need assistance in conducting your internal reviews, seek assistance from your departmental EEO Unit. If your department does not have such a unit, contact the EEO Unit of Civil Service. To every extent possible, respect confidentiality in conducting your reviews.

- When resolution of a report of alleged sexual harassment is achieved, be sure to monitor the situation to insure that there is no continuation or repetition of the problem and that there is no retaliation against the complaining party.

- Lastly, look at developing patterns which appear inconsistent with certain employee behaviors, i.e., significant increase of absenteeism, avoidance of interaction and communication with certain other employees, significant decrease of efficiency or productivity etc. These may be signs of potential sexual harassment; find out. *An employer is responsible for acts of unlawful sexual harassment when it knew or should have known of the behaviors which constitute sexual harassment.*

The current use of the language waiver expands employment opportunities and legitimately assures equal access and services . . .

OPINION

EFFECTS OF BILINGUAL WAIVERS by Gloria Louie

Approximately seventy percent of San Francisco's population is non-white. A good percentage of the seventy percent, are non-English speaking new tax paying Americans who have chosen San Francisco as their home. As new tax paying Americans, these individuals have a legal and moral right to access all city services and programs.

Advocate groups, departments city-wide and others have championed the cause for bilingual services to the non-English speaking public the City serves. Some city departments have been responsive to the need by placing special language conditions on public contact vacan-

cies as they become available. The need for these skilled employees continues to grow. "1990 census talk" suggests that the influx of new monolingual speaking Americans to San Francisco and the Bay Area has doubled in the last ten years and predicts the need may double as well within the next ten years.

The use of bilingual waivers has raised some concerns among monolingual English speaking applicants and employees. Although they believe there is a need for bilingual services they also see it as a manipulative device that may be used to bypass them for entry-level jobs and first-line promotive opportunities.

Understandably, the individuals who do not have a language skill are upset. They most likely view the language waiver as a process that is cutting into their "pocketbooks", and depriving them of jobs.

Depriving people of their livelihood is not the intended use of the bilingual waiver. The current use of the language waiver expands employment opportunities and legitimately assures equal access and services to the non-English speaking public in San Francisco. More language waivers are needed in public contact positions because more of the public this city serves are new non-English speaking Americans.

NEW COORDINATOR from Page 1

Her specific experiences have included management consulting to Fortune 500 companies with several Bay Area consulting firms, managing the Human Resources and Affirmative Action Training function for Fireman's Fund Insurance Company, and most recently, serving as the Manager of Equal Employment Opportunity and Affirmative Action at Sun Microsystems in Mountain View.

Ms. Hogan-Jackson was drawn from private industry to the public sector by her excitement about working in EEO/AA for the City of San Francisco. "San Francisco has such a vastly diverse employee population - more so than anywhere else I've been." Evelyn added, "Because of that diversity, I feel a great deal of optimism that San Francisco can realize the ideal of equal employ-

ment opportunity. If anyplace can tackle it, San Francisco can!"

While acknowledging that there is a lot of learning to be done about valuing diversity, the new Affirmative Action Coordinator explains why she has so much hope. "EEO and AA can play an important role as a change agent, impacting behaviors in a positive way." Hogan-Jackson believes that when people work in a setting as diverse as San Francisco, they have the opportunity to work with others from more varied backgrounds than they normally encounter in their day-to-day lives. Instead of melting away culture, as with the "melting pot" theory, we can learn to appreciate diversity and each individual's unique contribution in the workplace. These multicultural work skills can then transfer over to multicultural living skills.

According to Hogan-Jackson, one of the key elements to making these changes is training. She states, "The organization needs well trained effective management staff that can provide a clear sense of what behaviors are expected. . . . It's going to take some time. Change does not have to be monumental to be positive and exciting!"

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REASONABLE ACCOMMODATION

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and the California Fair Employment and Housing Act (FEHA). Frankfurt discussed the following aspects of these laws:

- All three laws recognize that employers must provide reasonable accommodation unless it presents an undue hardship.

- The definition of disability as used in the Rehabilitation Act of 1973 and the ADA is: A physical or mental impairment which substantially limits one or more major life activities of the individual: a record of such an impairment; or wrongly regarded or perceived to have such an impairment.

- Employers are at times justified in taking adverse action against disabled workers if:

- 1) the handicapped individual

cannot perform the essential functions of the job with reasonable accommodation;

- 2) the requested accommodation would pose an undue hardship on the employer (i.e., significant difficulty or expense relative to the employer's resources); or

- 3) the individual would pose a direct threat to the health or safety of others in the workplace that cannot be eliminated by reasonable accommodation.

Paul Imperiale discussed the Action Plan of the Mayor's 504 Taskforce (referring to the Rehabilitation Act of 1973, section 504). The Action Plan was developed to bring the City to full physical and programmatic accessibility for people with disabili-

ties. Imperiale shared the following updates regarding the plan.

- The City's Real Estate Department has already implemented a policy prohibiting the leasing of physically inaccessible office space.

- Two survey instruments were designed by the 504 Taskforce to assist departments to evaluate their own physical and programmatic accessibility. City departments are encouraged to obtain and use the survey instruments.

- In the next fiscal year, monies from the City's general fund may be earmarked for a City-wide reasonable accommodation fund.

Copies of material distributed are available from the Civil Service Commission EEO Unit at 554-4736.

PERSPECTIVES

ON DIVERSITY

c/o CSC EEO Unit

151 City Hall

San Francisco, CA 94102

REMINDERS

FEBRUARY.....Black History Month

MARCH.....Women's History Month

APRIL 17.....Conference on

Reasonable Accommodation
(Look for Notice)

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